4961

SUPREME COURT OF THE UNITED STATES.

No. 244.

THE UNITED STATES, APPELLANTS,

vs.

AUGUSTINE NARVAEZ.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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GIBSON, print.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the Private Land Claims in the State of Cal'a.

Be it remembered, that on this twenty-seventh day of February, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Augustin Narvaez, for the place named "San Juan Bautista," was presented, and ordered to be filed and docketed with No. 75, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *April* 27, 1852.

In case No. 75, Augustin Narvaez, for the place named "San Juan Bautista," the deposition of James W. Weeks, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 12 of this Transcript.)

In the same case, the deposition of Antonio Chaboya, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 10 of this Transcript.)

In the same case, the deposition of Henry W. Halleck, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 9 of this Transcript.)

In the same case, the deposition of Wm. E. P. Hartnell, a witness in behalf of the claimant, taken before Commissioner Harry J. Thornton, was filed.

(Vide page 8 of this Transcript.)

SAN FRANCISCO, *May* 11, 1852.

In the same case, the secretary filed the translation of document "A," annexed to the deposition of H. W. Halleck, filed January 27, which translation is as follows:

(Vide page 34 of this Transcript.)

SAN FRANCISCO, *March 2d*, 1853.

In the same case, the counsel for Henry Clarkson and Henry Vanderslice presented a supplemental petition, which was ordered to be recorded and filed among the papers in the case.

(Vide page 6 of this Transcript.)

SAN FRANCISCO, *Aug. 29th*, 1853.

Case No. 75 (Augustin Narvaez) called. The counsel for the claimant read the evidence; argued, submitted, and taken under advisement.

SAN FRANCISCO, *Nov. 15th*, 1853.

In the same case, Commissioner Alpheus Felch delivered the opinion of the board rejecting the claim.

(Vide page 36 of this Transcript.)

Petition.

STATE OF CALIFORNIA,
County of San Francisco.

To the Hon'ble Hiland Hall, Harry J. Thornton, and James Wilson, United States Commissioners for the adjudication of Land Claims.

Your petitioner, Augustin Narvaez, of the county of Santa Clara, in said State, represents that he is the claimant of the following tract of land, to wit: bounded by the farm of the Messrs. Bernals, with the farm of Justo Larios, with the mountains, with the land of Fernandez, and with the tract of land belonging to the pueblo of San José, not passing the groves of sycamore trees on said pueblo lands, and which tract of land your petitioner is known by the name of San Juan Bautista, and is situated in said county of Santa Clara, and comprises two leagues, more or less; that said land was granted to your petitioner by Manuel Micheltorena, brigadier general of the Mexican army, adjutant general of the staff of the same, governor of Upper California, and inspector of the department of the Californias, on the 30th day of March, A. D. 1844, at Monterey, in said State, in fee simple, in due form of law, pursuant to the decree of the Mexican Congress of 18th August, 1824, on colonization of the government regulations for colonization of territories, adopted 21st November, 1828, and in accordance with other laws of the Mexican government then in force in California, where said land is situated, he, the said Micheltorena, at the time of making said grant, having full power and authority to make the same, whether within ten leagues of the seacoast or not, in virtue of said laws and by the mandate of the supreme executive power of the Mexican nation; the said land, however, being distant from the nearest point of the seacoast ten or more leagues, and there being not

comprised within said tract of land more than one league of irrigable land.

Your petitioner further represents, that he has complied with all the conditions and requirements of said grant, a copy of which, marked A, and a translation thereof, marked B, accompanying the petition, are made part thereof; that at the time of making said grant, and for many years prior thereto, he had been residing and yet continues to reside, upon said land with his family; and that he had, when said grant was made, and long before, and yet continuing to have, valuable and lasting improvements thereon, in houses, in enclosures for farming and for orchards and vineyards, with fruit trees and the grape growing in said enclosures; that at the time he petitioned the said governor for said grant, he complied with said law and said regulations of 1828, by setting forth the necessary facts in his petition, accompanying the same with a map.

Your petitioner further represents, that owing to the change of government, and political disturbances which soon followed in point of time said grant, no judicial survey was made by Mexican authority of the land granted, nor was judicial possession delivered to him, nor was it presented to the departmental assembly for approbation; that as soon as the political disturbances ceased and competent surveyors could be procured, he caused said tract of land to be surveyed by the county surveyor of said county of Santa Clara, who in making the same was governed by the said map and grant; and by said survey there were within said tract three leagues and about one tenth of a league; that thereupon he caused two leagues of said tract to be surveyed by said surveyor, and had the same set apart to your petitioner, embracing the said land resided upon, and have improved as aforesaid when said grant was made, and still continues to reside upon with his family. The map of said surveys accompanying this petition is made part hereof. The map of the two leagues set apart to your petitioner *are* embraced within the red lines of said map. There being no interfering claim of said land; he, the said Narvaez, at the time of making said grant being a Mexican citizen of the territory of Upper California, with a family, and entitled by the laws of Mexico to receive such grant.

This honorable board are referred to said grant and the map thereof presented to said governor at the time of granting the same; to the map made by the said surveyor of said surveys as above mentioned; to the said law of 1824; the said regulations of 1828; to the mandates which issued to said governor; the Mexican law; the treaty of the United States made with Mexico, by which Upper California was ceded to the United States; and to such testimony which your petitioner can and will produce upon the hearing of his claim.

Wherefore your petitioner prays that this honorable board, upon

due consideration of his cause, will decree his title valid for the whole amount of land granted to him as described in the said grant; but if your honors should conceive your petitioner is only entitled to two leagues of land in virtue of said grant, that you will then decree the title valid as to said two leagues, and cause the same to be surveyed so as to embrace the said two leagues so surveyed and set apart to him as aforesaid, and that a report thereof be made to the proper officers of the United States, for the purpose of the issuance of a patent therefor to your petitioner, and for such other orders and decrees as may be necessary to perfect and confirm his title.

And, in duty bound, your petitioner will ever pray, &c.

AUGUSTIN NARVAEZ,
By his attorneys, WATSON & HESTER.
C. E. MOUNT, *of Counsel.*

Filed in office Feb'y 27th, 1852.

GEO. FISHER, *Sec'y.*

Supplemental Petition.

STATE OF CALIFORNIA,
County of San Francisco.

To the Hon. Hiland Hall and Harry J. Thornton, United States Commissioners for the adjudicating of said claims.

Your petitioners, Henry Clarkson and Henry Vanderslice, of the county of San Francisco, represent they are the claimants of the following tract of land in the county of Santa Clara, to wit: bounded by the farm of Messrs. Bernals, with the farm of Justo Larious, with the mountains, with the land of Hernandez, and with the tract of land belonging to the pueblo of San José, not passing the groves of sycamore trees on said pueblo lands, and which tract of land is known by the name of Juan Bautista, and is situated in said county of Santa Clara, and comprises two leagues, more or less.

Your petitioners claiming the whole of said land, except eight thousand eight hundred and forty acres, surveyed off and deeded to Augustine Narvaez. That the said land was granted to Augustine Narvaez, of Santa Clara county, by Manuel Micheltorena, brigadier general of the Mexican army, &c., on the 30th day of March, 1844, at Monterey, in said State, in fee simple, in due form of law, pursuant to the decree of Mexican Congress of 18 August, 1824, on colonization of territories, adopted 21 November, 1828, and in accordance with other laws of the Mexican government then in force in California, where same is situated. He, the said Micheltorena, at the time of making said grant, having full power and authority to grant the same, the said grant being accompa-

nied by a map of the land herein claimed showing the boundaries thereof.

That the said Augustin Narvaez did, for upwards of twenty years prior to and since the 30th of March, 1844, reside upon the said land with his family and his cattle, and quietly and peaceably enjoy the whole of the land within the boundaries described in the said map accompanying the grant; that subsequently to the date last mentioned, to wit, as soon as there was a legal and proper surveyor in the county in which the said land is situated, the said Augustine Narvarez caused the said land within the said boundaries to be surveyed, and found the same to contain three leagues and one-tenth, of which not more than one league was irrigable land.

That the said Augustine Narvarez, on the 11th April, 1850, at San José, conveyed to your petitioners the whole of the said ranch, except two leagues, to be measured off to the said Augustine Navarez by your petitioners, and which was done accordingly; and your petitioners paid to the said Augustine Navarez a good and valuable consideration for the said land so conveyed, a record of which exists on the books of the county recorder in and for the county of Santa Clara.

Your petitioners represent, that the original grant, deed, and maps of the land herein claimed, together with a duly authenticated plat of survey, and other papers and evidence in relation to the claim of the original claimant, are on file in the office of the secretary of this commission, in the claim No. 75, entitled Augustine Ravarez, rancho de San Juan Bautista, and that the conveyance from Augustine Navarez to your petitioners is on record as aforesaid, a transcript of which will be produced before honorable board, together with evidence of the title and possession of the original claimant, Augustine *Narvase;* wherefore your petitioners pray that this honorable board, upon due consideration of their claim, will decree them to be valid for the whole of the said rancho, excepting to the two leagues measured off and set apart to Augustin Narvarez, and that a report thereof be made to the proper officers of the United States *for the* of the issuance of a patent therefor, and for such other and general measures as may be requisite for perfecting of their title, and your petitioners will ever pray.

HENRY CLARKSON and
HENRY VANDERSLICE.
By their attorney, GEO. GORDON.

Filed in office March 2d, 1853.

GEO. FISHER, *Sec'y.*

Deposition of W. E. P. Hartnell.

OFFICE OF THE BOARD OF COMMISSIONERS
OF CALIFORNIA LAND CLAIMS,
San Francisco, April 27, 1852.

On this day, before me, Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in the State of California, came Wm. E. P. Hartnell, a witness produced in behalf of the claimant, Augustin Narvaez, whose petition being No. 75 on the docket of the board, and after being sworn, testified as follows. The law agent was notified and attended by Mr. Greenhow.

Questions by Claimant.

Question 1. Please state your name, age, and occupation.

Ans. 1. My name is William E. Hartnell; my age is 54 years; my present occupation *at present* translator of the State of California.

Ques. 2. Look upon the map now here shown to you purporting to be a map of the rancho San Juan Batista, and state what you know of it, and whether your signature is genuine where it occurs upon , and whether it is a true copy as it purports to be, (which map is herewith filed, marked "A.")

Answer. I have examined the paper or map of the said rancho referred to in the interrogatory; I know that it is a true copy of the map which was on file with the public archives of land titles at Monterey, in California, and that my signature affixed to it is genuine.

Question 3. Look upon the paper purporting to be a title to Augustin Narvaez from Micheltorena of the land called San *Jan* Bautista, which is marked Exhibit "A" in the deposition of H. W. Halleck, taken in the case, and state whether you are acquainted with the handwriting of Manuel Micheltorena and Manuel Jimeno; and if so, whether their signatures, where they occur in and upon said exhibit, are genuine.

Answer. I am perfectly well acquainted with the handwriting of both those persons, and that their signatures, where they occur on the said title papers, are genuine.

The law agent present.

W. E. P. HARTNELL.

Sworn to and subscribed before me this 27th April, 1852.

HARRY J. THORNTON, *Com'r, &c.*

Filed in office April 27th, 1852.

GEO. FISHER, *Sec'y.*

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Deposition of Henry W. Halleck.

OFFICE OF THE BOARD OF COMMISSIONERS
OF CALIFORNIA LAND CLAIMS,
San Francisco, April 27th, 1852.

On this day before me, Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in the State of California, came Henry W. Halleck, a witness produced in behalf of the claimant, Augustin Narvaez, whose petition being No. 75 on the docket of the board, and after being sworn, testified as follows:

The law agent was notified, and attended by Mr. Greenhow.

Questions by Claimant.

Question 1. What is your name, age, and occupation?

Answer. Henry W. Halleck is my name; age 53 years; profession of the law.

Question 2. Are you acquainted with the signatures of Manuel Jimeno and Manuel Micheltorena?

Answer 2. I am acquainted with the signature of M. Jimeno, but I never saw M. Micheltorena write.

Ques. 3. Look at the signatures to the petition and grant now shown, marked "A," and filed this day, and state if the signatures thereto are genuine.

Answer 3. The signature of Manuel Jimeno I believe to be genuine; that of Manuel Micheltorena I also believe to be genuine, having seen it a great number of times on public documents; but I have never seen him write; I have no reason to doubt its genuineness.

H. W. HALLECK.

The law agent present, and declines interrogating the witness.

Sworn to and subscribed in my presence this 27th April, 1852.

HARRY J. THORNTON,
Com., &c.

Filed in office April 27th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of Ant. Chaboya.

OFFICE OF THE COMMISSIONERS OF CALIFORNIA LAND CLAIMS,
San Francisco, April 27, 1852.

On this day before me, Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in California, came Antonia Chaboya, a witness produced in behalf of the claimant, Augustin Narvaez, whose petition is No. 75 on the docket of said commissioners. The witness being duly sworn, testified as follows:

The law agent of the United States was notified, and attended by Mr. Greenhow.

Questions by Claimant.

Ques. 1. What is your name, age, and place of residence, and nativity?

Ans. My name is Antonia Chaboya; I am in my 49th year; my residence is the county of Santa Clara, in California, and my birthplace is the town of San José.

Quest. 2. Are you acquainted with Augustin Narvaez, the claimant in this case; and if so, how long have you known him?

Ans. I am, and have known him about twenty-six years.

Quest. 3. Are you acquainted with the rancho of San Juan Bautista, and who has occupied it within your knowledge?

Ans. I am, and have known it previous to the occupation of the same by Narvaez; and also since occupied by him for the space of twenty-two years of continued occupation up to the present time.

Quest. 4. Since the occupation of the rancho by Augustin Narvaez how has he occupied it, and what improvements has he put upon it, if any, and the kind of such improvements?

Ans. He occupied it with cattle, horses, and sheep; cultivated the ground, raising corn, wheat, and barley; made also a garden, planted fruit trees, built houses, put up pens for cattle and horses, and fences enclosing the grounds. He lived on it, and is still living there, with his family, and the family of his two sons.

Quest. 5. Are you acquainted with the boundaries of the rancho of San Juan Bautista? If so, state who have the adjoining ranchos, and give a description of the boundary of said rancho.

Ans. I am acquainted with them partially. The town of San José joins to the north; the Monterey road joins to the east; and the lands of Justo Larios, Joaquin Bernal, and of the mission of Santa Clara join on it on the other sides.

Quest. 6. Do the lands of José Hernandez adjoin the rancho of San Juan Bautista?

Ans. They do.

Questions propounded by the Law Agent.

Ques. 1. Do you know who the land belonged to before it was occupied by Narvaez?

Ans. I do; a part belonged to the town of San José, and the other part to the mission of Santa Clara.

Question 2d. Do you know whether he obtained a leave from the town and the mission to occupy?

Ans. I do not; but from public report I understood that he petitioned the government for it, and it was granted to him.

Ques. 3. Do you know whether it was claimed by any one else since Narvaez occupied it?

Ans. I do not know.

his
ANTONIA ⋈ CHABOYA.
mark.

The law agent being present.

Sworn to and his mark made by the witness in my presence this 27th of April, 1852.

HARRY J. THORNTON, *Com'r, &c.*

Filed in office April 27th, 1852.

GEO. FISHER, *Sec'y.*

Deposition of James W. Weeks.

SAN FRANCISCO, *April* 27, 1852.

On this day, before me, Harry J. Thornton, one of the commissioners for ascertaining and settling private land claims in the State of California, came James W. Weeks, a witness produced on behalf of the claimant, Augustin Narvaez, whose petition is numbered 75 on the docket of the board, and after being sworn, testified as follows:

The law agent was notified, and attended by Mr. Greenhow.

Questions by Claimant.

Quest. 1. What is your name, age and occupation?

Ans. My name is James W. Weeks; my age between 37 and 38 years; I am now acting as interpreter for the county court of Santa Clara.

Question 2. Are you acquainted with Augustin Narvaez, the claimant in this case; and if so, how long have you known him?

Answer. I am acquainted with him; I have known him for the space of twenty years.

Question 3d. Are you acquainted with the rancho of San Juan Bautista; and if so, how long have you been acquainted with it, and who has been in possession of it, occupying, claiming and living in it?

Ans. I have been acquainted with the rancho as long as I have known Narvaez; it has been occupied by him and his family; his family was quite numerous, many of whom are married, and have horses upon the rancho, and are living there, and Augustin Narvaez still continues to live there with his family.

Question 4. How has he occupied it?

Ans. By building houses, enclosures for cultivation of grain to the extent of three or four hundred acres; he has it stocked with cattle of all kinds, has a blacksmith shop and soap factory, &c.

Question 5. Describe the boundaries of the said ranchos.

Ans. On the east by the Monterey road, on the south by Bernal's

line, Justo Larios, on the west by the Sierra Azul and the lands of José Hernandez, on the north by the line running through the middle of the Alisal, on the road to the pueblo.

Quest. 6. State if you know under what circumstances Narvaez applied the land, and who prepared the map of said rancho for him?

Ans. I think that in 1843 Narvaez applied to me to make him a map of the land of said rancho, as he said that he was going to apply to the government for a grant of said land, and I made the map accordingly, of which the map now shown to me marked Exhibit (A) to the deposition of W. E. P. Hartnell in this case, I believe to be a copy.

Question by the Law Agent.

Quest. 1. Do you know or have you heard that this property was ever claimed by any other person, or that the title of Narvaez to it was questioned?

Answer. I do not.

JAMES W. WEEKS.

The law agent present.

Sworn to and subscribed before me this 27th of April, 1852.

HARRY J. THORNTON, *Com'r.*

Filed in office April 27, 1852.

GEO. FISHER, *Sec'y.*

[1844.]

Espediente.

Promovido por el ciudadano Agustin Narvaez en solicitud del terreno nombrado San Juan Bautista.

[364.]

[*Here follows map; see original, page* 21.]

[3 S. D. K.]

C.—*Espediente.*

Ex'mo S'or Comand'te G'ral y Gefe Politico de hambas Cali fornias.

[4 S. D. K.]

Agustin Narvaez, vecino del pueblo de San José de Guadalupe y radicado hase veinte años en el paraje nombrado antiguam'te el ranchito, y p'r mi San Juan Bautista, en la mijor forma que la corresponde en derecho, se presenta y dice: que el año de mil ochocientos treinta y ciete solicito del S'or Gobernador Don Juan Bautista Alvarado la propiedad del citio citado, por medeo de una in-

stancia acompanada de un diseño culla instancia no e conseguido su proveido: El año anteriode mil ochocientos treinta y dos hize nueva instancia sin saber el probeido de ello; y noe conseguido hasta esta fecha se me haja saver si heso no admitida la solicitud q'e tengo representada, para cuy o fin elebo a V. E. este suplicatorio para que se me decreto lo que se halle por justo.

E. S. hes numerosa la familia que tengo, mis hienes necesito colocarlos en un paraje propio, p'a que si dios se acuerda de mi *mi* upora e hijos disfrutende tranquilidad, sin que los perjudiquen Ly. V. E. se compadea de mi; solo manifestare mis cortos servicios. Servi quinse años en la honrrosa carrera de las armas fui fundados de las misiones de Santa Cruz, Santa Clara, San José y los de San Fran'co en cullas se conciguio fuesen reconguistados mas de dos mil indigenas. Amas mis hijos consta p'r varios jefes los e dado al servicio de las armas. E. S. si me fui aujustos estos meritos que reprecento, esperose me atienda segun V. E. halle p'r combiniente, reclamando mis instancias y saver cual his el fin a que no se me ateridido; mas conforme en que V. E. a llegado a este desgracido pais y q'e hace segun su benignidad me a hobligado en derecho hacer este reclamo. Por tanto a V. E. rendidamente pido y suplico de digne acceder a mi solicitud de culla gracia vivire eternamente reconocido serviendose admiterme esta en papel comun p'r no haber en este punto del sello a q'e corresponde, juro de no Sor. de malicia en todo lo necesario, &c.

S'n Juan B'ta, 8'bre 5, de 1843.

AGUSTIN NARVAEZ.

MONTEREY, *Nove.* 22, *de* 1843.

Infe. el S'or s'rio del despacho tomando previamente los q'e y si necesitare, obligando a la parte a agregar unpliego de papel sellado que puede acompanar aqui.

MICHELT'A.

Ha—

[5 S. D. K.]

[Sello Cuarto—Dos Reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

MANUEL CASTANARES.]

MICHELTORENA.

{Ad'a Marit'a de Mont'y.}

—Habiendo agregado el papel sellado; pase este esped'te al jues del pueblo de San José p'a q'e informe sobre su continido, hasiendo sitacion a Dn. Maximo Martinez p'a q'e esponga sobre el particu-

lar lo que se le o fresea, y concluido que sea todo, buelva a esta s'ria p'a dar cumplim'to al superior decreto de hoy.

Monterey, 22 de N'bre, de 1843.

MAN'L JIMENO.

[6. S. D. K.]

En virtud del superior decreto q'e antecede este juzgado a hecho comparecer a las personas de D. Agustin Narvaez y Dn. Maximo Martinez las cuales han convenido en las lineas y senalamiento de terreno q'e cada uno se contrae en sus solicitudes mas camo este terreno se ha reconovido p'r, de la mision immediate de S'ta Clara, el ministro de de ella podra decir si se perjudica ono hay inconveniente. A parte q'e resulte en la solicitud del interesado q'e, una tercera parte del terreno q'e solicita es de este pueblo q'e tiene prestado, el cual no me parea conbiniente se posesione hasta tanto se le senale á este limites o ejidos.

Pueblo de S. José, Dic'bre 19, de 1843.

SALVIO PACHECO.

[7 S. D. K.]

Ex'mo S'or Gabernador:

El interesado en la precedente instancia es uno de los primeros pobladores de este pais; tiene muchos bienes en el terreno de que hace referencia, pues lo ocupa hace mas de 20 años con consentim'to de los antiguos padres ministros de S'ta Clara y de las autoridades del pueblo de San José, y si entanto tiempo ha conseguido sus titulos, es a causa del estravio que por varias veses han padesido sus papeles enpoder del mismo interezado, el cual es acredor á la gracia que pide, tanto por los servicios que es publico ha prestado des de la fundacion de varias misiones como por la inumerable familia que tiene, consols la restriccion de no comprehender en la consecion el terreno que han cultivado los becinos del pueblo por la parte de Sausal. Mas la determinacion de V. E. será la mas asertada.

Monterey, 18 de Enero, de 1844.

MAN'L JIMENO.

[8 S. D. K.]

MONTEREY, *En'o* 13, *de* '44.

En obvio de cuestiones en lo venidero y pa. qe. queden ayanadas todas dificultades impuesto qe. sea sirvase enformar el M. R. P. ministro de la mision de Santa Clara, y vuelva a este gobo. departamental.

MICHELT'A.

[9 S. D. K.]

Ex'mo S'or Gobernador:

Consiguiente al superior decreto qe. antecedo, e instancia del S'or D. Agustin Narvaes, como en ella no se demarca terreno ninguno,

y solo se contrahe a sus antiguas solicitudes y diceño con que las acompaño cuyos documentos dice en su instancia no haberse le dado el proveido, de lo que se infiere hallarse aun quisas en la secret'a de gobierno, ental concepto yo no puedo formar una idea justa de d'ho terreno qe. se solicita en propiedad pr. el referido S'or Narvaes mas hallandose en el dia levantado el plano de los terrenos de esta mission el que he mandado a V. E. pr. el y los antiguos documentos de la parte interesada creo qe. V. E. podra decidir este asunto atendiendo a la justicia, meritos y cargos servicios que d'ho S'or tiene prestados en este departamento; pero asi mismo atendiendo tambien al derecho de esta mision, qe. si en otras tiempos tenia terrenos suficientes para seder algunos sin perjuicio; en el dia se hallan tan esquilmados qe. ya casi no cuenta con ningunos, y mas estando cuestionados los qe aun reconva pr. suyos esta mision pr. los S'res Dn. Fran'co Estrada y Dn. José Noriega quienes las obtavieron pr. sorpresa qe. sin duda se hizo al S'or antecesor de V. E. Dn. Juan Bautista Alvarado, quien si hubiese sido mijos informado quisa no los habria concedido; mas ya dado este paso can manifiesto perjuicio de las derechos de la comunidad de S'ta Clara, sia los S'res ant'o referidos se les atiende en el derecho qe. alegan tener fundados solo en un titulo obtenido con su prepcion, en este caso cual es la parte de terrenos que se dija a beneficios de estos indigenas dignos y acredores por tantos titulos a sus tierras que dios y naturalizales han dado, a unos hombres qe. me atrevo a decirlo son los primeros qe. en el departamento de Californias han prestado en todas tiempas, al gobierno y a la nacion, utiles y herdaderos servicios personales y pecunarios?

Si, Ex'mo S'or, los intereses de los indigenas como si estos pueson los unicos ciudadanos en Californias, siempre han echo al gov'no sin tasa ninguna todo generode servicios y muchas ocasiones aun con sacrificio, merito, que a lo menos no podran alegar en su fabor las demas claces qe. spre han sido recompensados pr. el gobierno, el qe. alguna ves usando del dro eminente qe. es propio a la suprema autoridad, ha puesto contribucion indirecta en esta departam'te sin que grave los intereses de las qe. se decir ciudadanos estos qe. lo son enverdad y no el indigena qe. carece de esta prerogativa, aquellos al momento haciendo alarde de sus sagrados d'ros solo se eren acredores a recibir gracias y fabores del gobierno mas nunca con obligacion de menar el titulo de tales ciudadanos, sino es en lo qe. deja o por lo menos promete utilidad; pero en lo que quita aun que sea medio real por cuero que se embarque ya entonas se les presentan tantos precipicios qe. no los pueden salvar, no obitante to dos los sagrados d'ros d ciudadanos pr. qe. esto de contribuir, solo parece obligatorio a la clase mas infeliz y miserable, cual es el Indio.

No hay duda, Ex'mo S'or, que hay buenos ciudadanos en Californias, aun en grado eminente y guisa uno de estos lo es el S'or Dn. Augustin Narvaez, acredor ciertamente a que se le atienda en

su solicitud, concediendosele no solo la parte qe. ha ocupada de esta mison, sino tambien el terreno que pertenece a la comunidad del pueblo; pues d'ho S'or Narvaez ni es, ni ha sido de aquella clace [10 S. D. K.] de individuos qe. no dejan un momento de repose al gobierno, en solicitud de terrenos, con perjuicio de las legitimos propietarios, pa. lago hacer trafico un ellos seguros de que haciendo nuevas solicitudes fundadas en muchos meritos imaginarios, y pr. consiguiente fallas de servicios, los que no por eso pier den la esperanza de conseguir otro buen pedaso de tierra que aun que no tongan con que ocuparlo po. tiempo deja utilidad con el primer marchante que se presenta.

Me estendido mas de lo que pensaba V. E. tendra la bandad de disimular lo difuso qe. he sido, mas en defensa de mis encomendados me parea qe. no he dicho nada. De todo lo espuesta.

V. E. con aquella prudencia qe. le es tan propia, obrara en justicia lo qe. halla lugar en derecho.

Sta. Clara, Eno. 30, de 1844.

Ex'mo S'or,

FR. JESUS MA. VASQ'Z DE MERCED.

MONTEREY, *M'zo* 1*o, de* 1844.

A la s'ria p'a q'e haciendo vascar los antecedentes, indigue la estension del terreno solicitada cuanto dice el suplicante y lo q'e este pueda conseder en justicia, teniendo presente sus meritos, y el informe anterior del M. R. P. m'tro.

MICHELT'A.

[11 S. D. K.]

Ex'mo—

[Sello Quinto—Medio Real.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de los Californias para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.]

MICHELTORENA.

[Ad'a Marit'a de Mont'y. } —S'OR GOBERNADOR:

En la s'ria no constan ningunos anteced'te p'o p'r lo que se ha practicada en este espediente parese que no hay ningun inconveniente para que se le concedan dos sitios de ganado mayor, el sup'or discernim'to d V. E. dispandra lo mijor.

Monterey, 21 de Marzo, de 1844.

MAN'L JIMENO.

Monterey, M'zo 23, de 1844.

Conf'e.

MICHELT'A.

[12 S. D. K.]

MONTEREY, *Marzo* 30, *de* 1844.

Vista la peticion conque da principio este espediente los informes que preceden, con to do lo demas que se tubo presente y de ver convino, de conformidad con las leyes y reglamentos de la materia, declaro a D'n Agustin Narvaez deceño en propiedad del paraje conocido con el nombre de San Juan B'ta colindante con el rancho de los Señores Bernales con el de Justo Larios, con la Sierra con el parage de los Hernandez y el pueblo de San José, sin pasar del Alisal que a este lepertenece en estension de dos sitios de ganado mayor, librese el correspond'te despacho, tomese razon en el libro respectivo y diejare este esped'te a la ex'ma asamblea departamental para su aprobacion, el E. S. gobernador general de brigada del ejercito Mejicano, ayudante general de la plana mayor del mismo asi lo mando, decreto y firmo.

[13 S. D. K.]

El ciudadano Manuel Micheltorena, General de Brigada del Ejercito Mejicano, Ayudante General de la Plana Mayor del mismo, Gobernador, Comandante General é Inspector del Departamento de las Californias.

Por cuatro el ciudadano Agustin Narvaez, ha pretendido p'a su beneficio personal y el su familia dos sitios de ganado mayor dentro del terreno nombrado San Juan Bautista colindante con el rancho de los Señores Bernales con el de Justo Larios, con la sierra, con el paraje de los Hernandez y el pueblo de San José, sin pasar del Alisal que a este le pertence practicados previamente las diligencias y averiguaciones concernientes segun lo dispuesto por leyes y reglamentos usando de las facultades que me son conferidas a nombre de la nacion Mejicana he benido en concederle el terreno mencionado, declarandole la propiedad de el por las presentes letras, sugetandose a la aprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

1a. No podra venderlo enagenarlo ni hipotecarlo, imponer censo vinculo fianza ni otra gravamen alguno.

2a. Podra sercarlo sin perjudicar las travecias, caminos y servidumbres; lo disfrutara librey esclusivam'te destinandole al uso o cultivo que mas le acomede, pero dentro de un año fabricara casa y estara habitada.

3a. Solicitara del juez respectivo que le de la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos pondra a mas de las mojoneras algunos arboles frutales o silvestres de alguna utilidad.

[14 S. D. K.]

4a. El terreno de que se hace donacion es de dos sitios de ganado mayor poco mas o menos segun esplica el diceño respectivo, el juez

que diere la posecion, lo hara medir conforme a ordenanza quedando el sobrante que resulte a la nacion para los usos convenientes.

5a. Si contraviniere a estos condiciones perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando que sirviendole de titulo el presente y teniendose por firme y valedero, se tome razon de el en el libro a que corresponde y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey a trienta de M'zo de mil ochocientos cuarenta y cuatro.

MANUEL MICHELTORENA.

MANUEL JIMENO, *Secretario.*

Queda tomada razon de este despacho en el libro respectivo a fojas 8.

FRANC'O ARCE.

JIMENO, *el Amanuense.*

OFFICE OF THE SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such, now having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the fourteen preceding and hereunto annexed pages of tracing paper, numbered from one to fourteen, inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file, and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal (not having a seal of office) at the city of San Francisco, Cal., this 29th day of April, 1852.

SAM'L D. KING,
Surveyor Gen'l Cal.

Filed in office Jan'y 8th, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Translation of Espediente.

Most Excellent Senior Commandant Gen'l and Political Chief of the two Californias:

I, Agustin Narvaez, resident of the pueblo of San José de Guadalupe, and located for twenty years upon the place *call* "El Rancheto," and by me named "San Juan Bautista," as best I may in law, present myself and say: That in the year 1837 I solicited of the S'or governor, Don Juan Bautista Alvarado, the ownership of the aforementioned place by means of a petition, accompanied by a

plat, (diseño,) which petition had not obtained his approval the year prior to 1832. I made a new petition, to know what opposition was made, and I have not obtained to this date that I should be informed whether there was or not admitted the petition which I presented, for which purposes I address your excellency, and supplicate that you decree in my favor that which you may deem just, excellent s'or, a place suitable to fix my property upon, so that, should God remember me, my wife and children might enjoy some tranquillity, and be free from injury. If your excellency should sympathise with me, I shall simply make known my few services: I served fifteen years in the honorable profession of arms; I founded the missions of Santa Cruz, Santa Clara, and San José, and that of San Francisco, in which there was reconquered more than 2,000 Indians. Moreover, it is shown by different chiefs that I have brought up my children in the service of the arms of the country. If your honor considers to be just these claims which I set forth, I hope that you will attend to my case as you may deem proper. Considering my representations and inquiring into the reasons why I was not attended to, inasmuch as your excellency has come to this unfortunate country, and will do justice, as your kindness prompts you, I fell obliged to make this request. Therefore I humbly beg and ask of your excellency that you accord to my demand, for which favor I shall remain forever grateful, hoping that you will be pleased to allow it on this common paper, not having any in this place of the proper seal. I swear this not to be done in malice, and for all necessary purposes, &c.

(Signed) AUGUSTIN NARVAEZ.

MONTEREY, *Nov'r 22d*, 1843.

Let the secretary make the necessary informations he may need, obliging the party to annex the sheet and stamped paper that can be bought in this place.

(Signed) MICHELTORENA.

Stamp Fourth—Two Reales.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the year 1843.

(Signed) MANUEL CASTANARES.

(Signed) MICHELT'A.

[SEAL.]

Having annexed the sealed paper, let this espediente be referred to the magistrate of the pueblo of San José, that he may report on its contents, having cited Don Maximo Martinez to make known the particulars he knowing of; and having accomplished all that is

necessary, let it be returned to the secretary's office for the completion of this day's decree.

Monterey, 22d Nov., 1843.

(Signed) MAN'L JIMENO.

In virtue of the preceding supr. decree, this judgeship has summoned to appear Don Agustin Narvaez and Don Maximo Martinez, who have determined upon the lines and boundaries of the land to which they each agree in their petition; but as this land has been recognised to belong to the adjoining mission of Sta. Clara, its father minister shall say if it is injured, or if there is no objection apart of that which results from the petition of the interested party; that a third portion of the land which he solicits belongs to this pueblo, and that he holds it under a loan; for all of which it does not seem to me proper that he should enter in possession until I determine his boundaries and limits to the land.

Pueblo of San José, Dec'r 19th, 1843.

(Signed) SALVIO PACHECO.

MOST EXCELLENT S'OR GOVERNOR: The interested party in the preceding petition is one of the first settlers of this country; he has a good deal of property on the land to which he refers; therefore he occupies it for more than twenty years with the consent of the old father ministers of Sta. Clara, and of the authorities of the pueblo of S. José; and if in such a length of time he has not obtained his title, it is on account of the many various changes his papers have suffered in the possession of the same interested party; that he, the petitioner, is entitled to the favor he asks, as much for the services which it is publicly known he has rendered since the foundation of various missions, as for his innumerable family, with the only restriction not to comprehend in the concession the land cultivated by the inhabitants of the pueblo in the direction of the ("Sausal,") willow grove. But the determination of your excellency will be the best.

Monterey, 18th Jan'y, 1844.

(Signed) MANUEL JIMENO.

MONTEREY, *Jan'y* 13, 1844.

For settling all questions in future, and to terminate all difficulty that might be set up, let the M. R. F. minister of the mission of Sta. Clara make his report, and return it to this departmental gov't.

(Signed) MICHELTORENA.

Most Excellent S'or Governor:

Pursuant to the preceding superior decree and petition of the S'or D. Augustin Navarez, as in it he has not marked out any land, and simply refers to his old petitions and plat with which he

accompanies said documents, he says in his petition that he did not know of the decree, from which he inferred that it was still to be found in the office of the secretary of state; therefore, I cannot make a just estimate of said land solicited in fee simple by the said Navarez; moreover, you will find that on that day was made the plan of the lands of this mission, which I transmit to your excell'y through him, with the old documents of the party interested. I believe your excell'y will be able to adjust this question, attending to the justice, the merits, and great services rendered to this department by said S'or; but at the same time you might also be attending to the rights of this mission, which if in other times did own lands enough to give some up, without injury, at the present day, they are so limited as hardly to number any; and moreover, that those which the mission still recognises as hers are disputed by the S'ors D. Franc'o Estrada, and D. José Noriega, who obtained them by misrepresentation, which no doubt they made to the Señor, your excelly's predecessor, D. Juan Bautista Alvarado, who, had he been better informed, would have seen fit not to concede them. Moreover, having already this, and the manifest injury of the rights of the community of Santa Clara, if the gov's before referred to should be attended to in the right which *the* allege they have, and is given solely in a title obtained by *subreption* in this case, which is the portion of lands which was left for the benefit of those Indians worthy of, and entitled to, so many titles to their lands that God and nature have given to them; those men who, I venture to say, are the first who, in the department of California, have rendered in all times to the government, and to the nation, useful and true services; y. most excellent gov., the interests of the Indians, provided they were the only citizens in California, have always been rendered to the government without remuneration whatever, all kinds of services, and on different occasions, even with sacrifice and merit, as I think; and can they not allege in their favor the instance of the other classes who have always been recompensed by the government, which if same time rising of the well known right that belongs to the supreme authority has placed indirect contributions in this department without burthening the interests of those who call themselves citizens, but those of the true citizens, the Indians, who are wanting of this prerogative; those now boasting of the rights they enjoy believe themselves alone entitled to receive favors from the government, but never with the obligation to complete the title of such citizens, unless it is in what is left, or for the least guaranties profit; but in that which is left, although it be a "half real" for every hide that is shipped, then are offered impediments which they cannot remove, notwithstanding all the sacred rights of citizens, whereby this mode of contribution alone seems obligatory upon the most unfortunate and poorest class, which is the Indian class.

There is no doubt, most excellent sir, that there are good citizens in California even in high position; and as one of those is the S'or D. Augustine Narvarez, entitled certainly to be attended to in his petition, that there may be conceded to him not only the portion of the mission which he has occupied, but also the land which belongs to the community of the pueblo; therefore said S'or Narvaez neither is, nor has been, of either class of individuals who do not leave a moment's rest to the government, in petitioning for lands to the injury of the legitimate proprietors to make traffic of them soon afterward, certain that in making new petitions founded on many imaginary merits, and consequently of services, that with these they will not lose the hopes of obtaining another good piece of land, although they have not got the requisite to occupy it; but profit is always left with the first traficker who presents himself.

I have dwelt on this longer than I thought; your excellency will be so good as to tolerate my lengthiness on this subject. Moreover, on behalf of my constituents, it seems to me I have said nothing but what is allowed. Your excellency, with its wonted prudence, will do in justice all that is right, &c.

S'ta Clara, Jan'y 30th, 1844.

Most Excellent S'or,

(Signed) FR. JESUS MA. VASQ'Z DE MERCADO.

MONTEREY, *March 1st*, 1844.

In the office of secretary it seems that in making search for the antecedents they will show the extent of the land solicited, *are* represented by the petitioner, and that which can be considered in justice comprising his present merits, and the anterior information of the most R. F. minister.

(Signed) MICHELTORENA.

Seal Fifth—Half Real.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

PABLO DE LA GUERRA.

MICHELTORENA.

[SEAL.] Most Excellent S'or Governor:

In the office of the secretary there appears no antecedent but what has been done in this espediente. It seems there is no impediment to grant two (sitios de ganado mayor) square leagues. The superior judgment of your excellency will direct that which is best.

Monterey, 21st March, 1844.

(Signed) MANUEL JIMENO.

MONTEREY, *March* 23*d*, 1844.

I comply in this.
(Signed) MICHELTORENA.

MONTEREY, *March* 30, 1844.

Considering the petition with which begins this espediente, the preceding informations, with all that which is presented and found in conformity with the law and regulations appertaining to the matter, I declare Dn. Augustin Navarez owner in fee of the place known by the name of Sn. Jn. Bautista, bounded by the rancho of the S'res Bernales, by that of Justo Larios, by the (sierra) range of mountains, by the place of the Hernandez, by the pueblo of San José, not going beyond its (alisal) alder trees, to the extent of two square leagues. Let the corresponding title be issued; let it be recorded in the respective book, and let it be despatched to the most excellent departmental assembly for its approbation. The most excellent S. governor, brigadier gen'l of the Mexican army, adjutant gen'l of the *the* staff of the same, thus has ordered, decreed, and signed.

The citizen Manuel Micheltorena, Brigadier General of the Mexican Army, Adjutant Gen'l of the Staff of the same, Governor, Commandant Gen'l and Inspector of the Department of the Californias.

Whereas the citizen Augustin Navarez has solicited, for his personal benefit and that of his family, two (sitios de ganado mayor) square leagues within the land named, Sn. Jn. Bautista, bounded by the rancho of S'rs Bernales, by that of Justo Larios, by (la sierra) the range of mountains, by the place of the Hernandez, by the pueblo of San José, not going beyond the (alisal) alder trees that belong to this mission, the proper investigations and corresponding steps belonging thereto being previously complied with as ordered by laws and regulations, by virtue of the authority in me vested, in the name of the Mexican nation, have determined to concede to him the mentioned land, declaring unto him the ownership thereof by these presents, he subjecting himself to the approbation of the most excellent departmental assembly, and under the following conditions:

1st. He shall not sell it, alienate it, hypothecate it, subject it to taxation, bond, entail, nor to any incumbrance whatsoever

2d. He may enclose it without injuring the crossings, roads, and servitudes; he shall enjoy it freely and exclusively, destining to the use or culture that may best suit him, but within one year he shall build a house and it shall be inhabited.

3d. He shall solicit of the respective magistrate to give him the juridical possession in virtue of this decree; by him shall be marked out the boundaries, in which, besides the landmarks, he shall place some fruit trees or forest trees of some utility.

4th. The land of which donation is made is of two square leagues, more or less, as shown by the respective (deseño) plat. The magistrate who shall give the possession shall cause it to be measured conformably to ordinanza, the (sobrante) overplus that may result remaining to the nation for its convenient uses.

5th. If he contravenes these conditions he shall lose his right to the land, and it shall be denounced by another.

Therefore I order that these presents, serving him as a title, and being held as firm and valid, note be made of it in the corresponding book, and it be delivered to the interested party for his security and other ends.

Given in Monterey the 30th of April, 1844.

MANUEL MICHELTORENA.

MANUEL JIMENO, *Secretary.*

Record of this decree has been made in the corresponding book, at page 8.

JIMENO. FRANCO. ARCE.

I certify the above translation to be a and faithful translation from the duly authenticated "fac simile" espediente filed in this case. GEO. FISHER, *Sec'y.*

Filed in office Aug. 22, 1853.

GEO. FISHER, *Sec'y.*

A.—*Document annexed to the Deposition of H. W. Halleck.*

Sello Primero—Ocho Pesos.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de la Californias, para los años de mil ochocientos cuarenta y cuatro y mil ochocientos cuarenta y cinco.

PABLO DE LA GUERRA.

MICHELTORENA.

{ Ad'a Marit'a de Mont'y. }

El ciudadano Manuel Micheltorena, General de Brigada del Ejercito Mejicano, Ayundante General de la Plana Mayor del mismo, Gobernador, Comandante General de la Plana Mayor é Ynspector del Departamento de las Californias.

Por cuanto el ciudadano Agustin Narvaez, ha pretendido para su beneficio personal y el de la familia dos sitios de ganado mayor dentro del terreno nombrado San Juan Bautista, colindante con el rancho de los Señores Bernales, con el Justo Larios, con la sierra, con el paraje de los Hernandez y el pueblo de San José, sin *sin* pasar del alisal que a este le pertenece, practicados previamente las diligencias y averiguaciones concernientes segun lo dispuesto por

leyes y reglamentos; usando de las facultadas que meson conferidas á nombre de la nacion Mejicana he benido en concederle el terreno mencionado declarandole la propiedad de el por las presentes letras, sujetandose, a la aprobacion de la ex'ma asamblea departamental y bajo las condiciones siguientes:

1a. No podra venderlo, enagenarlo, ni hipotecarlo, imponer, censo, vinculo fianza ni otra gravamen alguno.

2a. Podra sercarlo sin perjudicar las travecias, caminos y servidumbres, lo disfrutara libre y esclusivamente destinandolo aluso ó cultivo que mas le acomode pero dentro de un año fabricara casa y estara habitada.

3a. Solicitara del juez respectivo que le de la posecion juridica en virtud de este despacho, por el cual se demarcaran los linderos en cuyos limites pondrá á mas de las mojoneras algunos arboles frutales o silvertes de alguna utilidad.

4a. El terreno de que se hace donacion es de dos sitios de ganado mayor poco mas o menos segun esplica el diceño respectivo. El juez que diere la posecion lo hara medir conforme á ordenanza que dando el sobrante que resulte a la nacion para los usos convenientes.

5a. Si contraviniere a estas condiciones perderá su derecho al terreno y será denunciable por otro.

En consecueneia mando que serviendole de titulo el presente y teniendose por firmo y valedero se tome razon de el en libro a que correspond'e y se entregue al interesado para su resguardo y demas fines.

Dado en Monterey, a treinta de Marzo, de mil ochocientos cuarenta y cuatro.

MAN'L MICHELT'A.

MAN'L JIMENO, *S'rio.*

Queda tomado razon de este despacho en el libro respectivo a fs. 8.

JIMENO.

Filed for record 27th April, 1850, 7 $\frac{55}{60}$ o'cl'k p. m.

Recorded in book A, folio 27.

Filed in office April 27, 1852.

GEO. FISHER, *Sec'y.*

Translated and filed in office May 11th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in record of Evidence, vol. 1, pages 178 and 179.

GEO. FISHER, *Sec'y.*

Translation of Grant.

First Stamp—Eight Dollars.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years 1844 and 1845.

PABLO DE LA GUERRA.

MICHELTORENA.

[L. S.]

Citizen Manuel Micheltorena, Brigadier General of the Mexican Army, Adjutant General of the Staff of the same, Governor, Commandant General of the Staff and Inspector of the Department of the Californias.

Whereas citizen Augustin Narvaez has solicited, for his personal benefit and that of his family, two square leagues, (sitios de ganado mayor,) within the land named San Juan Bautista, bounded by the rancho of Messrs. Bernales, by Justo Larios, the mountains, the place of the Hernandez, and by the town of San José, without passing further than the grove of alder trees, (alisal,) which belongs to it, the (pueblo,) after having previously made the corresponding investigation, and taken the proper steps, according to the laws and regulations, by virtue of the authority in me vested, in the name of the Mexican nation, I have determined to concede to him the land mentioned, declaring to him the ownership thereof by the present letters, subject to the approbation of the most exc't departmental assembly, and under the following conditions:

1st. He shall not sell, alienate, hypothecate it, impose any tax, entail, bond, or any other encumbrance upon it.

2d. He may fence it without prejudice to the crossings, roads, and servitudes; he will enjoy it freely and exclusively, destining it to the end or cultivation which may be most convenient to him; but within one year he shall build a house, which shall be inhabited.

3d. He shall solicit from the respective judge to give him the juridical possession in virtue of this title, by whom the boundaries shall be marked out; on which limits he shall place, besides the landmarks, some fruit trees or forest trees of some usefulness.

4th. The land of which donation is made is of two square leagues, (sitios de ganado mayor,) a little more or less, as it is explained in the respective diagram.

The judge who shall give the possession shall cause it to be measured according to ordinance, the overplus that should result remaining to the nation for its convenient uses.

5th. If he should contravene these conditions, he shall lose his right to the land, and it shall be denounceable by another.

In consequence, I command that these presents, serving him as

a title, and being held as firm valid, be entered in the corresponding book, and delivered to the party interested for his security and other ends.

Given in Monterey March 30th, 1844.

MANUEL MICHELTORENA.

MANUEL JIMENO, *Sec'y.*

This title has been entered in the respective book, folio 8.

JIMENO.

Made and filed in office February 27th, 1852. San Francisco.

GEO. FISHER, *Sec'y.*

Opinion of the Board.

AUGUSTIN NAVAEZ
vs.
THE UNITED STATES.

For the place called "San Juan Bautista," containing two square leagues of land.

It appears, from the traced copy of the espediente filed in this case, that the claimant petitioned the governor for the grant Oct. 5, 1843, and after obtaining the requisite information, an order of concession was made on the 30th March, 1844. The grant duly authenticated is given in evidence; it is signed by Governor Manuel Micheltorena, is made subject to the approval of the departmental assembly, and is dated March 30th, 1844; no approval by the assembly is shown.

The conditions of the grant required, among other things, that the grantee should build a house on the premises within a year. It also required him to petition the proper officer to give him juridical possession, to place the proper landmarks, to designate the land as it should be measured to him by the officer, the surplus land remaining to the nation. The grant issued by Governor Micheltorena describes the land granted as "two square leagues," within the tract of land called "San Juan Bautista," bounded by the rancho of Señores Bernales, by that of Justo Larios, by the sierra, by the place of the Hernandez and the pueblo of San José, without going farther than alisal (alder trees,) belonging to the latter. That this was a grant of two square leagues of land, to be located within the limits of the tract surrounded by the exterior boundaries above named, and not of the whole tract above described, is evident from the terms of the grant itself.

Two square leagues alone only were granted, and not the whole of the tract called San Juan Bautista in the above description. It was not San Juan Bautista, thus bounded, that was granted, but a tract two square leagues in extent, lying within its limits and part of it. That this was the true design, the granting power,

and no mere accidental phraseology used in the document, is evident from the espediente.

In his petition for the grant, the claimant solicits a concession of the land by the name of San Juan Bautista, without mentioning the quantity, or giving any further description. He alleges, moreover, that he had previously petitioned to Governor Alvarado, and had presented a plat (diseño) of the land, but no notice had been taken of his application. From the information which was taken on the subject, by order of Governor Micheltorena, it appears that the land had been formerly *been* claimed in part by the pueblo of José, and a part of the mission of Santa Clara. A reference was made to the magistrate of San José for information, and he reported that one-third of the land belonged to that pueblo, and says that he does not think it proper that the petitioner should enter in possession until he (the magistrate) determined his boundaries and limits of the land. The Reverend Father, minister of the mission, in his report, says that he cannot make a just estimate of the land solicited by Navaez, because he has not marked out any land, and simply refers to his old petitions and plat filed at the time of his former application, and adds, that they were transmitted with them to the governor through said Narvaez, a plan of the lands of the mission, by reference to which the governor would be able to determine the question. On receiving these reports, the governor made an order for a search for the old petition and map in the proper office. To this order the secretary made report on the 21st March, 1844, stating that they could not be found, but adds, that there seems to be no impediment to granting two square leagues within the exterior limits above mentioned.

It is evident from these proceedings that the question of definite location, and of the limits and boundaries of the land granted, was left unsettled, and the grant was purposely made of the specified quantity of two square leagues within the limits mentioned, and it was left to the claimant to obtain a juridical survey, in order to define and separate the land which should become his under the grant. The juridical act of measurement was one partly of a judicial character, and especially designed to settle boundaries between the holders of coterminous grants, who was summoned to be present at the survey. The settling of these exterior lines was very properly left to be made when such official measurement should take place. That being done, the officer giving the possession was further required by the conditions of the grant, if more than two square leagues of land resulted, when these boundaries were fixed, to proceed and set off by metes and bounds to the claimant two square leagues of land, as specified in his grant. The remainder continued the property of the nation. We have had occasion, in another case bearing much similarity to the pres-

ent, to state that the claimant would be in such entitled to a confirmation for the whole land, if it proved not to exceed the quantity granted to him, but that the burden of proof was on him to show one of two things: first, that he had obtained the measurement required by the grant, and therefore obtained a separation of the land granted, and held his specified portion by the metes and bounds thus established; or, secondly, that by measurement it was found that there was no more land in the entire space in which his location was to be made than was conceded by the grant, in which event the whole would pass by the grant. In this case the claimant obtained no juridical survey, nor had he proved that the land did not exceed two square leagues; on the contrary, he alleges in his petition, and shows by a map presented as part of his case, that by an actual survey recently made the quantity of land was ascertained to be three square leagues, and about one-tenth of a league. The claimant also shows, that he caused the surveyor, on ascertaining the quantity in the whole tract, to survey out, and separate by metes and bounds, according to his direction, a portion of said land, two square leagues in quantity, which he claims for the land conceded to him. He asks, in his petition, that he may be confirmed in the title to the whole tract of land described; or if that cannot be granted, that he may be confirmed in the two square leagues, as surveyed and laid off in the map accompanying his petition. If the country still continued under the jurisdiction and laws of Mexico, he would have no claim to the entire premises. He was expressly restricted by his grant to the quantity of two square leagues. Nor would he, if no cession had been made, be entitled to the specific portion set apart for his two leagues by a surveyor under his own direction, because that designated could only be made by the proper magistrate, clothed with power to perform important official act in the presence of the owners of the adjoining lands, making the proper measurements, and giving juridical possession. Such a *solem* act, obtained on his own application, and performed at his expense, was the only means by which he could obtain the assignment of his specific two leagues of land, and its separation from the other portion of the land belonging to the nation. This he failed to do, not for want of time before the cession was made, but for reasons of which no explanation is given. The case of the claimant then is the common one of the grant of a specified quantity of land which the party interested might locate by juridical survey, within the boundary of a larger tract, and which he failed to cause to be located and segregated. He had then no established limits to his lands at the time of the cession, no segregation of it from the public domain, and no definite boundaries of a specified portion of land to which his equities attached, and what this commission can carry into grant. We cannot confirm mere floating permission to locate land. We are limited by

the law under which the commission is organized, and by the principles settled in similar cases in the Supreme Court of the United States, to grants with specific boundaries described therein, or those which have been made certain by juridical survey, according to the terms of the grant before the cession. There seems to have been long occupation of the premises in this case, which might seem to commend it to a most favorable consideration.

We are not authorized to apply a rule in one case which we do not apply in another.

We are not authorized to locate lands never yet segregated from the national domain, either by an authorized survey, or sufficient description in the grant to enable the survey to be made according to its calls. If a case of hardship is presented for the want of these, it is for Congress, and not this commission, to afford the proper relief.

The claim must be rejected.

Filed in office Nov. 15, 1853.

GEO. FISHER, *Sec'y.*

Decree.

AUGUSTIN NARVAEZ
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioner is not valid, and his application for a confirmation thereof is therefore denied.

ALPHEUS FELCH,
R. AUG. THOMPSON,
THOMPSON CAMBPELL,
Commissioners.

Filed in office Nov. 15th, 1853.

GEO. FISHER, *Sec'y.*

Secretary's Certificate.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the Private Land Claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing forty-one pages, numbered from 1 to 41, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 75 on the docket of the said board, wherein Agustin Narvaez is the claimant against the United States for the place known by the name of "San Juan Bautista."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Francisco, California, this twenty-third day of August, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

GEO. FISHER, *Sec'y.*

[SEAL.]

Endorsed: Filed August 23d, 1854.

JOHN A. MONROE, *Clerk.*

Notice of Appeal.

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Whereas the commission constituted for the purpose of ascertaining and settling private land claims in the State of California, by the act of Congress of the United States of America approved on the 3d of March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," did, on the fifteenth day of November, 1853, by their decision of that date, decide against the claim presented by the undersigned to the said commissioners, which claim is for land lying in the said northern district, and is No. 75 on the docket of claims before said board; and the said claimant being desirous that the said district court should review the said decision, now hereby files this notice in the said clerk's office of his intention to prosecute an appeal, as is provided by the 12th section of an act entitled "An act making appropriations for the civil and diplomatic expenses of the government for the year ending the thirtieth of June, eighteen hundred and fifty-three, and for other purposes," which said act was approved on the 31st of August, 1852.

AUGUSTIN NARVAEZ,
By THORNTON & WILLIAMS,
His Attorneys.

To the Clerk of the District Court of the U. States for the northern district of California. Dec. 24, 1853.

Endorsed: Filed December 24th, 1853.

JNO. A. MONROE, *Clerk.*

Notice of Appeal.

CLERK'S OFFICE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

Whereas the commission constituted for the purpose of ascertaining and settling private land claims in the State of California, by the act of Congress of the United States of America approved on the 3d of March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," did, on the 15th day of November, 1853, by their decision of that date, decide

against the claim presented by the undersigned to the said commissioners, which claim is No. 75 on the docket of claims before said board, and is for land lying in the said northern district; and the said claimant, being desirous that the said district court should review the said decision, now hereby files this notice in the said clerk's office of his intention to prosecute an appeal, as is provided by the 12th section of an act entitled "An act making appropriations for the civil and diplomatic expenses of the government for the year ending the thirtieth of June, 1853, and for other purposes," which said act was approved on the 31st of August, 1852.

AGUSTIN NARVAEZ,
By THORNTON & WILLIAMS,
His Attorneys.

To the Clerk of District Court of U. S. for the northern district of California.
September 1st, 1854.

Endorsed: Filed September 1st, 1854.
JOHN A. MONROE, *Clk.*

Petition.

To the Honorable district Court of the United States in and for the northern district of California:

Your petitioner, Agustin Narvaez, respectfully represents to this honorable court, that he did heretofore, as will fully appear by the transcript of the proceedings had before the board of commissioners to ascertain and settle the private land claims in the State of California, now on file in this court, present before the said board, whilst holding its session in the city of San Francisco, a claim for the land lying and being in the State of California, and northern district thereof, and described in the said transcript, being claim No. 75 of the list of claims presented to the said board under and by virtue of the act of Congress approved on the 3d of March, 1851.

The claim of this petitioner is founded upon a concession and grant made by Manuel Micheltorena, under authority of the Mexican government, of the department of the Californias, on the 30th day of March, 1844, which said concession and grant, together with the preliminary proceedings to procure the same, are fully set forth, with the proof and testimony, in the transcript aforesaid.*

Your petitioner respectfully represents that his said claim has been rejected by the said board, and he now here humbly prays this honorable court to review the decision of the said board, and to decide on the validity of his claim.

AGUSTIN NARVAEZ,
By his counsel, THORNTON & WILLIAMS.

*See amendment on next page.

I hereby acknowledge due service of this petition.

S. W. INGE.

After the words "transcript aforesaid," sixth line from bottom, page 1st, insert the following:

And your petitioner would further state, that on the 23d day of August, 1854, the said transcript, and on the 24th of December, 1853, and afterwards on the 1st of September, 1854, notice of his intention to prosecute an appeal, as required by law, were filed in the clerk's office of this hon'ble court, as will appear by the record.

THORNTON & WILLIAMS.

Amended by consent, June 13, 1855.

A. GLASSELL,
Ass't U. S. Dist. Att'y, &c.

Endorsed: Filed Sept'r 26th, 1854.

JOHN A. MONROE, *Clerk.*

Order allowing all parties to take further testimony.

At a special term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Friday, the sixth day of October, in the year of our Lord one thousand eight hundred and fifty-four.

Present, the Honorable Isaac S. K. Ogier, district judge.

AUGUSTINE NARVAEZ
vs.
THE UNITED STATES.

On motion of counsel for claimant, and with the consent of the U. S. attorney, ordered by the court, that all parties interested be allowed to take further evidence in this cause, upon reasonable notice, before a U. S. commission of this court.

Endorsed: Filed October 6th, 1854.

JNO. A. MONROE, *Cl'k.*

Deposition of Sherman Day.

United States District Court, northern district of California.

SAN FRANCISCO, *June* 6, 1855.

UNITED STATES
vs.
AUGUSTIN NARVAEZ.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c. &c., came Sherman Day, a witness produced on behalf of the claimant in case No. 7, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 75 on the

docket of the said board of commissioners, and was duly sworn, and testified as follows:

Present, the U. S. district attorney, per A. Glassell, and Thornton & Williams, per J. J. Williams.

Questions by J. J. Williams.

What is your name, age, and place of residence?

Answer. Sherman Day; reside in San José; and am forty-nine years of age.

2d. How long have you been in California, and what business have you been engaged in?

Answer. I have been here nearly six years, and have been engaged principally in surveying.

3d. Did you ever in the exercise of your profession survey the rancho San Juan Bautista, claimed in this case, and make a map of the same? If yea, please produce said map, and say under what circumstances you made said survey and map, and by what you were guided in making the same. Describe the boundaries of said rancho as surveyed by you.

Answer. I have surveyed it once, and partially surveyed it a second and third time. I surveyed first in 1850, commencing the survey under Mr. Lyman, who was then the official surveyor of the middle district of California as arranged under the direction of Governor Mason. Mr. Lyman left the country soon after the commencement of the survey, and I completed the survey. I was guided at the time by the original papers in the hands of Augustin Narvaez and copies of the papers in the possession of Mr. Lyman, and by the information received from old Californians, who pointed out the boundaries of other ranchos. One of these persons was José Hernandez. At that time I aimed to survey all the land which could by any possibility be covered by the claim, expecting to have the two leagues cut off by some magistrate who had the power to do it. For that purpose I presented the papers to Fernandez, who was second alcalde at the time. He went on the ground, but did not divide the land. He took the papers under advisement, and within one week his official term expired, and the new State government intervened without any action on his part. I subsequently made some surveys at the request of persons who had purchased under Narvaez. I made a duplicate and original map at the time, and gave one to Narvaez, and the other to the purchasers from Narvaez. In the autumn of 1854 I re-surveyed a portion of this rancho; and as deputy surveyor of the county of Santa Clara, and as U. S. deputy surveyor, I have surveyed various lines across this rancho, and in the vicinity of the pueblo of San José, and the map herewith presented, marked exhibit "J. A. M.," was made from data obtained in all the various surveys heretofore alluded to. During the re-survey in 1854, I had in my possession the certified copies of the original diseño of the expediente

and grant, and opinion of the board of land commissioners. These copies were obtained from the secretary of the board of the land commissioners, (Geo. Fisher,) and are herewith marked respectively AB, AC, AD.

Question. Does your survey and map correspond with the grant and diseño contained in the record in this case?

Answer. The map presents a correct topographical representation of the physical features of the land referred to in the grant and diseño, together with a portion of the pueblo of San José, which is not represented in the diseño. These physical features correspond in relative positions and character as nearly with those represented in the diseño as an accurate drawing will with one rudely made. The boundary of Bernal's land is represented as pointed out by Buelna Bernal, which I believe to be that confirmed by the commissioners. The Saucelito referred to is that agreed upon by Narvaez and Bernal. The boundaries of Justo Larios' land are those pointed out by José Hernandez and other California witnesses. I have represented on the map two lines, as explained on the map, for Hernandez's boundary.

Question. Describe the boundaries of said rancho as surveyed by you.

Answer. The title calls for five boundaries in words as expressed therein. First, the rancho de los Signores Bernales; second, that of Justo Larios; third, the sierra; fourth, the Parage de los Hernandez; and fifth, the pueblo of San José; but this latter is qualified by an exception requiring that it shall not pass Alizal, which belongs to the pueblo. This is considered to be a grove of large sycamores lying south of the pueblo, and between it and Narvaez's rancho. Some translators render alizal *and* alder, but it is meant in California a sycamore, and is so marked on my map as a grove of sycamores. This enumeration leaves two boundaries undefined for which we are to seek our authority in diseño, and also from the limitation contained in the grant, which is confined to two leagues. One of those lines is supplied by the diseño, and is evidently the water-course running at the foot of the hills of San Juan Bautista; the remaining line is to be drawn between Hernandez's boundary and the Alisal. These lines enclose the entire body of land granted, with the exception of two short lines connecting the water-course of San Juan Bautista with the Alisal, and another connecting the hills of San Juan Bautista with Bernal's boundary. In the first of these lines, I taken the point and drawn the line from the point where the water approaches nearest the Alisal. In the second case I have drawn the line from the Saucelito noted in the original diseño to the most southern hills of San Juan Bautista. If a point be taken on the Hernandez line, as surveyed by me in 1850, two-thirds the way from the foot of the sierra hills to the arroyo de los

Gatos, and from said point a line be drawn to the Alisal near Kell's house, it will conform in position generally to a dotted line on the diseño, and will embrace, with the other boundaries above described, about two leagues and one-seventieth. If a similar operation be performed on the line surveyed by Heeley in 1854, it will not materially vary the result. The excess over two leagues would be about double *one* or one-thirtieth.

Question. Is there any difficulty in locating this rancho, and surveying it according to said grant and diseño?

Answer. None whatever, when the lines of the coterminous grants confirmed already by the board are ascertained, and when the person making the survey is clothed with the power of the U. S. surveyor general.

Question. In what county is the land situated; and is it north or south of the thirty-seventh degree of north latitude?

Answer. In Santa Clara county, and north of the thirty-seventh degree of latitude.

SHERMAN DAY.

Sworn to and subscribed before me this 6th day of June, A. D. 1855.

JNO. A. MONROE,
U. S. Commiss.

[13 S. D. K.]

Exhibit A B, attached to Deposition of Sherman Day.

El Ciudadano Manuel Micheltorena, General de Brigada del Ejercito Mejicano, Ayudante General de la Plana Mayor del mismo, Gobernador, Comandante General é Ynspector del Departamento de las Californias.

Por cuanto el ciudadano Agustin Narvaez ha pretendido para su beneficio personal y el de su familia dos sitios de ganado mayor, dentro del terreno nombrado San Juan Bautista, colindante con el rancho de los Señores Bernales con el de Justo Larios, con la sierra, con el parage de los Hernandez, y el pueblo de San José sin pasar del Alizal que a este le pertenece; practicados previamente las diligencias y averiguaciones concernentes segun lo dispuesto por leyes y reglam'tos usando de las facultades que me san conferidas a nombre de la nacion Mejicano he venido en concederle el terreno mencionado, declarandole la propiedad de el por las presentes letras, sujetandose a la aprobacion de la exma. asamblea departamental y bajo los condiciones siguientes:

1a. No padra venderle enagenarlo, ni hipotecarlo, imponer censo vinculo, fianza in otra gravamen alguno.

2a. Podra cercarlo sin perjudicar las travesias caminos y servidumbres, lo disfrutara libre y esclusivamente destinandolo al uso o cultivo que mas le acomode, pero dentro de un año fabricara casa y estara habitada.

3a. Solicitara del juez respectivo que le la posesion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos pondra amas de las mojoneras algunos arboles frutales o silvestres de alguna utilidad.

4a. El terreno de que se hace donacion es de dos sitios de ganado mayor poco mas o menos segun esplica el diseño respectivo. El juez que diere la posesion, lo hara medir conforme a ordenanza quedando el sobrante que resulte a la nacion para los usos convenientes.

5a. Si contraveniere a estas condiciones perdera su derecho al terreno y sera denunciable por otro. En consecuencia mando que serviendole de titulo el presente y teniendose por firme y valedero se tome razon de el en el libro a que corresponde y se entregue al interesado para su resguardo y demas fines. Dado en Monterey, a treinta de Mzo. de mil ochocientos cuarenta y cuatro.

MANUEL MICHELT'A.

MANUEL JIMENO,
Secretario.

Queda tomada razon de este despacho en el libro respectivo a fojas 8.

JIMENO,
El Amanuese.

FRANC'O ARCE.

I, George Fisher, secretary to the board of the United States land commission for ascertaining and settling private land claims in the State of California, do hereby certify that the foregoing is a true and correct extract of a fac simile of a Spanish document authenticated by Samuel D. King, lately surveyor general of the United States for the State of California aforesaid, which said document purporting to be an espediente filed in case No. 75 on the docket of the said board now in this office.

In testimony whereof I have hereunto subscribed my name, office of the secretary of said commission, San Francisco, this 6th day of October, A. D. 1854.

GEO. FISHER, *S'y.*

Exhibit A C, attached to Deposition of Sherman Day.

AUGUSTIN NARVAEZ
vs.
THE UNITED STATES.

For the place called "San Juan Bautista," containing two square leagues of land.

It appears from the traced copy of the espediente filed in the case, that the claimant petitioned the governor for the grant, October 5, 1843, and after obtaining the requisite information, an order of concession was made on the 30th March, 1844. The grant duly authenticated is given in evidence. It is signed by Governor

Manuel Micheltorena, is made subject to the approval of the departmental assembly, and is dated March 30th, 1844. No approval by the assembly is shown.

The conditions of the grant required, among other things, that the grantee should build a house on the premises within a year. It also required him to petition the proper officer to give him juridical possession, to place the proper landmarks to designate the land as it should be measured to him by the officer; the surplus land remaining to the nation.

The grant issued by Governor Micheltorena describes the land granted as "two square leagues within the tract of land called 'San Juan Bautista,' bounded by the rancho of Señores Bernales, by that of Justo Larios, by the sierra, by the place of the Hernandez, and the pueblo of San José, without going further than the alisal (alder trees) belonging to the latter." That this was a grant of two square leagues of land to be located within the limits of the tract surrounded by the exterior boundaries above named, and not of the whole tract above described, is evident from the terms of the grant itself. Two square leagues only were granted, and not the whole of the tract called San Juan Bautista in the above description. It was not San Juan Bautista thus bounded that was granted, but a tract two square leagues in extent, lying within its limits and part of it.

That this was the true design of the granting power, and no mere accidental phraseology used in the document, is evident from the espediente.

In his petition for the grant, the claimant solicits a concession of the land by the name of San Juan Bautista, without mentioning the quantity, or giving any further description. He alleges, moreover, that he had previously petitioned to Governor Alvarado and had presented a plat (diseño) of the land, but no notice had been taken of his application. From the information which was taken on the subject by order of Governor Micheltorena, it appears that the land has formerly been claimed in part by the pueblo of San José, and a part by the mission of Santa Clara. A reference was made to the magistrate of San José for information, and he reported that one third of the land belonged to that pueblo, and says that he does not think it proper that the petitioner should enter in possession until he (the magistrate) determined his boundaries and limits of the land. The Reverend Father, minister of the mission, in his report, says that he cannot make a just estimate of the land solicited by Narvaez, because "he has not marked out any land," and simply refers to his old petitions and plat filed at the time of his former application; and he adds, that there was transmitted with them to the governor, through said Narvaez, a plan of the lands of the mission, by reference to which the governor would be able to defermine the question. On receiving these re-

ports the governor made an order for a search for the old petition and map in the proper office. To this order the secretary made report on the 21st March, 1844, stating that they could not be found, but adds, that there seems to be no impediment to granting two square leagues of land, and then follows the grant of two square leagues within the exterior limits above mentioned.

It is evident from these proceedings that the question of definite location, and of the limits and boundaries of the land granted, was left unsettled, and the grant was purposely made of the specified quantity of two square leagues within the limits mentioned, and it was left to the claimant to obtain a juridical survey in order to define and separate the land which should become his under the grant. The juridical act of measurement was one partly of a judicial character, and especially designed to settle boundaries between the holders of coterminous grants, who were summoned to be present at the survey. The settling of these exterior lines was very properly left to be made when such official measurement should take place.

That being done, the officer giving the possession was further required by the conditions of this grant, if more than two square leagues of land resulted when these boundaries were fixed, to proceed and set off by metes and bounds to the claimant, two square leagues of land as specified in his grant. The remainder continued the property of the nation. We have had occasion in another case, bearing such similarity to the present, to state that the claimant would in such case be entitled to a confirmation for the whole land, if it proved not to exceed the quantity granted to him, but that the burden of proof was on him to show one of two things: either, first, that he had obtained the measurement required by the grant, and therefore obtained a separation of the land granted, and held his specified portion by the metes and bounds thus established; or, secondly, that by measurement it was found that there was no more land in the entire space in which his location was to be made, than was conceded by the grant, in which event the whole would pass by the grant.

In this case the claimant obtained no juridical survey, nor has he proved that the land did not exceed two leagues. On the contrary, he alleges in his petition, and shows by a map presented as a part of his case, that by an actual survey recently made, the quantity of land was ascertained to be three square leagues, and about one tenth of a league. The claimant also shows, that he caused the surveyor, on ascertaining the quantity in the whole tract, to survey out and separate by metes and bounds, according to his direction, a portion of said land two square leagues in quantity, which he claims for the land conceded to him. He asks in his petition that he may be confirmed in the title to the whole tract of land described; or if that cannot be granted, that he may be confirmed in the two

square leagues as surveyed and laid off in the map accompanying his petition.

If the country still continued under the jurisdiction and laws of Mexico, he would have no claim to the entire premises. He was expressly restricted by his grant to the quantity of two leagues. Nor would he, if no cession had been made, be entitled to the specific portion set apart for his two leagues by a surveyor under his own direction, because that designation could only be made by the proper magistrate, clothed with power to perform an important official act in the presence of the owners of the adjoining lands, making the proper measurements, and giving juridical possession. Such a solemn act obtained on his own application, and performed at his expense, was the only means by which he could obtain the assignment of his specific two leagues of land, and its separation from the portion of the land belonging to the nation. This he failed to do, not for want of time before the cession was made, but for reasons of which no explanation is given.

The case of the claimant then is the common one of the grant of a specified quantity of land, which the party interested might locate by juridical survey, within the bounds of a larger tract, and which he failed to cause to be located and segregated. He had then no established limits to his land at the time of the cession, no segregation of it from the public domain, and no defined boundaries of a specified portion of land to which his equities attached and which this commission can carry into grant. We cannot confirm mere floating possession to locate land; we are limited by the law under which the commission is organized, and by the principles settled in similar cases in the Supreme Court of the United States, to grant with specific boundaries described therein, or those which have been made certain by juridical survey according to the terms of the grant before the cession. There seems to have been long occupation of the premises in this case, which might seem to commend it to a most favorable consideration. We are not authorized to apply a rule in one case which we do not apply in another. We are not authorized to locate lands never yet segregated from the national domain, either by an authorized survey or sufficient description in the grant to enable the survey to be made according to its calls. If a case of hardship is presented for the want of these, it is for Congress, and not for this commission, to afford the proper relief.

The claim must be rejected.

I, George Fisher, secretary to the board of the United States land commission for ascertaining and settling private land claims in the State of California, do hereby certify that the foregoing is a true and correct copy of the opinion of the said board, delivered in case No. 75 on the docket of the said board now in this office.

In testimony whereof, I have hereunto subscribed my name,

square leagues as surveyed and laid off in the map accompanying his petition.

If the country still continued under the jurisdiction and laws of Mexico, he would have no claim to the entire premises. He was expressly restricted by his grant to the quantity of two leagues. Nor would he, if no cession had been made, be entitled to the specific portion set apart for his two leagues by a surveyor under his own direction, because that designation could only be made by the proper magistrate, clothed with power to perform an important official act in the presence of the owners of the adjoining lands, making the proper measurements, and giving juridical possession. Such a solemn act obtained on his own application, and performed at his expense, was the only means by which he could obtain the assignment of his specific two leagues of land, and its separation from the portion of the land belonging to the nation. This he failed to do, not for want of time before the cession was made, but for reasons of which no explanation is given.

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The claim must be rejected.

I, George Fisher, secretary to the board of the United States land commission for ascertaining and settling private land claims in the State of California, do hereby certify that the foregoing is a true and correct copy of the opinion of the said board, delivered in case No. 75 on the docket of the said board now in this office.

In testimony whereof, I have hereunto subscribed my name,

office of the secretary of said commission, San Francisco, State of California aforesaid, this ninth day of October, A. D. 1854.

GEO. FISHER, *S'y.*

Exhibit A D, attached to Deposition of Sherman Day.

[*Here follows map—see original, page* 83.]

I, George Fisher, secretary to the board of United States land commissioners for ascertaining and settling private land claims in the State of California, do hereby certify that the foregoing is a true and accurate extract from a fac simile of a Spanish document authenticated by Samuel D. King, lately surveyor general of the United States for the State of California aforesaid, which said document purporting to be an "espediente" filed in case No. 75 on the docket of the said board now in this office.

In testimony whereof, I have hereunto subscribed my name, office of the secretary of said commission, San Francisco, in the State of California aforesaid, this 6th day of October, A. D. 1854.

GEO. FISHER, *S'y.*

Endorsed: Filed June 6th, 1855.

JOHN A. MONROE, *Clerk.*

Answer.

In the District Court of the United States for the northern district of California.

THE UNITED STATES, Appellees,
vs.
AUGUSTIN NARVAEZ, Appellant.

The United States, the above named appellees, by their attorney, deny all and singular the allegations in the said petition contained, and especially the validity of the title of the said claimant therein alleged, and pray that the decision of the board of commissioners be confirmed, and that the said title be decreed to be invalid.

A. GLASSELL,
Ass't U. S. Dist. Att'y.

Endorsed: Filed June 14th, 1855.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Opinion delivered by M. H. McAllister, Esq., Circuit Judge.

AUGUSTIN NARVAEZ, Appellant,
vs.
THE UNITED STATES, Appellee.

District Court U. S. for the northern district of California.

The claim of appellant is predicated upon a grant issued to him

by Governor Micheltorena, dated March 30, 1844, subject to the approval of the departmental assembly.

The parole evidence ascertaining the fact that appellant had lived on and cultivated the land petitioned for some twenty years, had built several houses, members of his family had been married, and established their homes upon the premises.

This case has been submitted without argument, each party relying on the case as presented in the transcript filed in this court.

The "commissioners to ascertain and settle the private land claims in the State of California" reject all the claim of appellant on the ground that no segregation of the land from the public domain had taken place by judicial measurement, and appellant being placed in possession of the land by Mexican authority, and that by the terms of the grant no specific land was granted, but only a certain quantity within the limits defined by the grant.

In the petition filed to Governor Micheltorena in 1843, the petitioner states he had been located for twenty years on the place called "El Ranchito," and named by himself "San Juan Bautista," and asks for a concession of the place eo nomine; but he does not mention the quantity, nor give any boundaries or other description than the name. His petition was referred to the proper functionary for the requite information. A report was made in response to the reference, that the petitioner and one Don Maximo Martinez had appeared and had determined upon the lines and boundaries of the land, to which they each agree in their petition; "but as the land had been recognised to belong to the adjoining mission of St. Clara, the Father Minister shall say if there be no injury; or if there is no objection apart of that which results from the petition of the interested party, that a third portion of the land he solicits belongs to the pueblo, and that he holds it under a loan;" and the report concludes by stating it would not be proper for the petitioner to enter into the possession of the land until its limits were determined by measurement. This report is dated "Pueblo of San José, Dec. 19, 1843," and signed by Salvio Pacheco, the magistrate of said pueblo. On 18 Jan'y following, the secretary of state, at Monterey, reports to the governor, referring to the long residence of petitioner on the land, his worthiness to receive, and the reasons which had prevented his not having previously obtained a title for the land, and recommends the prayer of the petitioner should be granted. On receipt of these two reports, the governor referred the case to the minister of St. Clara to report, with a view, as the reference states, of "settling all questions in future, and to terminate all difficulty that might be set up."

A very long and somewhat confused report, which throws little light on the matter, is made to the governor on 30 Jan'y, 1844, which is followed by a reference by his excellency to the secretary's office to procure, to use its language, "antecedents," that will show the extent of the land solicited as represented by

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the petitioner." In reply to this, the secretary of state reports, "there is no antecedent, but what has been done in this expediente," and concludes in these words: "It seems there is no impediment to grant two (sitios de ganado mayor) square leagues;" whereupon the governor issued this grant to the appellant reciting he had solicited two (sotios de ganado mayor) square leagues within the land named San Juan Bautista, bounded by the rancho of the San Bernales, by that of Justo Larios, by (la sierra) the range of mountains, by the place of Hernandez, by the pueblo of San José, not going beyond the (alisal) alder trees that belong to the mission."

The evidence establishes the fact that, within the limits prescribed in the grant, there are three and one *one*-tenth leagues. Now, the petition of appellant was for the tract of land specifically known as "San Juan Bautista," in the possession of which he had been twenty years; but the intention is clearly manifested on the face of the grant, and by the intrinsic evidence in the cause, to grant the appellant but two square leagues within the place so called. The reports which were made intermediate the filing of the petition and the issue of the grant, and the concluding clause of the secretary of state in his last report to the governor, that there is no impediment to grant two square leagues, furnish conclusive proof of the intent.

The grant on its face, not by way of reservation, but in express terms, limits the quantity of land to two square leagues. Nor does the grant refer to or adopt the map filed by the petitioner. The appellant claims under the grant, and by it must the extent of his claim be ascertained. This court, therefore, agrees with the commissioners, who decide that the interest which was conveyed to appellant by the grant was a right to two square leagues only, to be taken out of the limits mentioned in that instrument. Viewed in that light, it is clearly entitled to be considered a valid claim under the authority of the case of Fremont vs. The United States, Sup. Ct., Dec'r 24, 1854, and for reasons stated by this court in commenting upon that authority in the case of Vecauno Armigo vs. The United States, decided at the present term.

The following decree will be entered:

Decree.

District Court of the United States for the northern district of California.—Stated term, July 5th, 1855.

AGUSTIN NARVAEZ
vs.
THE UNITED STATES.

Appeal from the final decision of the Commissioners to ascertain and settle private land claims in California.

This cause coming on to be heard at a stated term of this court,

on appeal from the final decision of the commissioners to ascertain and settle the private land claims in the State of California, under the act of Congress of 3d March, 1851, upon the transcript of the proceedings, decision, and the papers and evidence on which said decision was founded, and also upon testimony taken in this court, and counsel for both parties having appeared in court, it is hereby ordered, adjudged, and decreed, that the said decision of the said commissioners is hereby reversed, annulled, and set aside; and it is hereby further ordered, adjudged, and decreed, that the claim of the appellant, Augustin Narvaez, be, and the same is hereby, confirmed and adjudged to be a good and valid claim to the extent of two square leagues (or sitios de ganado mayor) and for no more, in the land described in grant set forth in the record, provided said quantity of land to him granted and now to him confirmed be contained within the boundaries called for in said grant; and if there be less than two square leagues, or sitios de ganado mayor, within said limits, then there is confirmed to him the less quantity.

M. HALL McALLISTER,
Cir. Judge.
OGDEN HOFFMAN, Jr.,
U. S. Dist. Judge.

Endorsed: Filed July 5th, 1855.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Order granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-house in the city of San Francisco, on Thursday, the fifth day of July, in the year of our Lord one thousand eight hundred and fifty-fifty.

Present, Hon. M. H. McAllister, circuit judge, and the Honorable Ogden Hoffman, jr., district judge.

THE UNITED STATES
vs.
AUGUSTIN NARVAEZ. } No. 7.

In the case, on the application of the U. S. dist. att'y, made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court, rendered in said cause at the present term, be, and the same is hereby granted; and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed July 5th, 1855.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

I, William H. Chevers, clerk of the district court of the United States, for the northern district of California, do hereby certify that the annexed pages, from one to ninety-one, inclusive, contain a full, true, and correct transcript of the record on file from the board of land commissioners, together with the pleadings, depositions, orders, opinion, and decree filed in this office in the case entitled The United States, appellant, vs. Augustin Narvaez, appellee.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this fourth day of May, A. D. [SEAL.] one thousand eight hundred and fifty-eight, and of our independence the eighty-second.

W. H. CHEVERS,
Clerk.

Filed 11th December, 1858.